

## **LICENSING AGREEMENT FOR CONDUIT OCCUPANCY**

THIS CONDUIT LICENSING AGREEMENT (the "Agreement") made and effective as of this 1st day of December, 1999, by and between Mid-Plains, Inc., a Wisconsin corporation with offices at 8501 Excelsior Drive, Madison, WI 53717 ("Licensor") and KMC Telecom, Inc., a Delaware corporation, with offices at 710 East Mifflin Street, Madison, WI 53703 ("Licensee").

### **RECITALS**

**WHEREAS**, Licensor is the owner of a certain Conduit System; and

**WHEREAS**, Licensee proposes to install and maintain fiber optic cable and associated equipment in Licensor's Conduit System to provide telecommunications services to: the Dean Clinic located at 752 North High Point Road, Madison, Wisconsin, as specified in Exhibit A; and the Orbi-Tech Corp., located at 1212 Fourier Drive, Madison, Wisconsin, as specified in Exhibit B.

**NOW, THEREFORE**, in consideration of the promises, the mutual covenants, terms and conditions herein contained, the parties do hereby mutually covenant and agree as follows:

### **1 ARTICLE**

#### **DEFINITIONS**

For the purpose of this Agreement, the following terms when used herein shall have the following meanings.

1.1 Conduit means a structure, usually underground, which may contain, among other things, one or more Innerducts.

1.2

1.3 Conduit System means any combination of Innerducts, Conduits, Manholes, Handholes and Pedestals joined to form an integrated whole, which is owned solely or in part by the Licensor.

1.4

1.5 Handhole means a buried box with a lid that is even with the surface of the ground used to store, terminate, splice or transfer fiber optic cable.

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1.7 Innerduct means a single enclosed raceway/channel within a single Conduit in which the fiber optic cable will be placed.

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1.9 Licensor's Facilities means all personal property and real property owned or controlled by Licensor.

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1.11 Licensee's Telecommunications Facilities means all facilities, including but not limited to fiber optic cables, equipment and all associated hardware, owned and/or utilized by the Licensee which occupy a Conduit System.

1.12

1.13 Make-Ready Work means all work, as reasonably determined by Licensor, including, but not limited to, inspections, engineering permits, construction, installment, rearrangement and/or transfer of existing facilities required to accommodate the Licensee's Telecommunications Facilities in a Conduit System and to meet the National Electric Safety Code ("NESC"), the Wisconsin State Electric Code or other reasonable requirements of Licensor. In determining whether make-ready work is necessary or what make ready work is necessary Licensor shall endeavor to minimize its costs to Licensee.

1.14

1.15 Manhole means a subsurface enclosure which Licensor's qualified personnel may enter and use for the purpose of installing, operating and maintaining telecommunications facilities.

1.16

1.17 Pedestal means an above ground structure used to store, terminate, splice or transfer fiber optic cable.

## **2ARTICLE**

### **SCOPE OF AGREEMENT**

1.1 Subject to the provisions of this Agreement, Licensor agrees to issue Licensee, for the purposes limited to those described herein, a revocable and nonexclusive license authorizing the placement of Licensee's Telecommunications Facilities in Licensor's Conduit System as specified in Exhibit A.

1.2

1.3 No use, however extended, of Licensor's Conduit Systems or payment of any fees or charges required under this Agreement shall create or vest in Licensee any easements or any other ownership or property rights of any nature in Licensor's Conduit Systems. Neither this Agreement, nor the license granted hereunder shall constitute an assignment of any of Licensor's rights to use the public or private property containing Licensor's Conduit Systems.

1.4

1.5 The parties agree that this Agreement shall not be construed as limiting or interfering with Licensor's right to locate and maintain its Conduit Systems and to operate its facilities in conjunction therewith in such a manner as will best enable it to fulfill its own service requirements, except to the extent expressly provided hereunder or by the Telecommunications Act of 1996 or other applicable laws, rules or regulations.

1.6

1.7 The parties intend that nothing contained in this Agreement should act as a limitation, restriction, or prohibition against Licensor with respect to any agreement which Licensor has heretofore entered into, or may in the future enter into, with others not parties to this Agreement regarding Licensor's Conduit Systems, including the Conduit System covered by this Agreement. Licensee acknowledges that such an Agreement with a third party may make rearrangement of Licensee's Telecommunications Facilities necessary. Licensee agrees that in such event, Licensee will cooperate in good faith with such rearrangement work; provided however, that Licensor shall give Licensee thirty (30) days written notification of such intent to rearrange Licensee's Telecommunications Facilities.

1.8

1.9 Should Licensor determine a need to occupy all or part of the Conduit System capacity occupied by Licensee's Telecommunications Facilities and, if Licensor advises Licensee that Licensee's Telecommunications Facilities can be accommodated otherwise on Licensor's Conduit System, Licensor shall rearrange Licensee's Telecommunications Facilities at Licensor's expense. Licensor shall make rearrangements in such manner that will minimize chances for service interruption to Licensee customers.

1.10

1.11 If the Licensor intends to modify or alter a Conduit System, the Licensor shall provide the Licensee thirty (30) days written notification prior to making the proposed modification or alteration in order to provide Licensee a reasonable opportunity to modify or add to its existing attachment. The notification requirement of this section shall not apply to emergency situations. If the Licensee adds to or modifies its Telecommunications Facilities after such notice, the Licensee shall bear a proportionate share of the costs incurred by the Licensor, as reasonably determined by Licensor, in making the space in the Conduit System accessible to Licensee and Licensor shall be indemnified by Licensee for such work in accordance with Article X, Section 10.4.

1.12

1.13 In the event of an emergency, as soon as practicable thereafter and not later than seventy-two (72) hours after having taken such action, Licensor will advise Licensee in writing of the work performed or the action taken with respect to the modification or alteration of Licensee's Telecommunications Facilities.

1.14

1.15 Nothing contained in this Section or any license issued hereunder shall be construed as requiring Licensee to bear any expenses which, under the Telecommunications Act of 1996 or other applicable federal or state laws or regulations, are to be allocated to persons or entities other than Licensee; and provided further, however, that Licensee shall have no responsibility for rearrangement costs and expenses relating to rearrangements performed for the purpose of meeting Licensor's business needs or the business needs of any other licensee or joint-user.

1.16

## **2ARTICLE**

### **FEES AND CHARGES**

1.1 Upon execution of this Agreement, Licensee shall pay to Licensors the Make-Ready Work costs incurred by Licensors, as set forth in Exhibit C.

1.1 Upon execution of this Agreement, Licensee shall pay to Licensors a non-discriminatory recurring Monthly Conduit Occupancy Rental Fee as set forth in Exhibit C, based on the actual occupancy of Licensors's Conduit System as set forth in Exhibits A and B.

1.2

1.3 Licensors shall invoice Licensee on a monthly basis. Licensee shall make payment to Licensors within thirty (30) days from the date of the invoice. Non-payment within thirty (30) days after receipt of the of any amount due under this Agreement shall constitute a default by Licensee of this Agreement. Past due amounts shall be assessed a late payment charge in the amount of 0.000493 percent per day (annual percentage rate of 18 percent) compounded daily, or the highest rate allowed by law, whichever is lower.

1.4

1.5 If any of Licensee's Telecommunications Facilities are found occupying any portion of any of Licensors's Conduit System other than as set forth in Exhibit A, Licensee shall pay to Licensors a Fee for Unauthorized Access as set forth in Exhibit C, within seventy-two (72) hours after having sent or receive notice pursuant to Section 7.1 or 7.2.

1.6

1.7 After the expiration of one year from the date of this Agreement, non-discriminatory changes in Exhibit C may be made by Licensors upon at least sixty (60) days prior written notice to Licensee. Notwithstanding any other provision of this Agreement, Licensee may terminate this Agreement at the end of such notice period if the change in Exhibit C is not acceptable to the Licensee by giving the Licensors written notice of its election to terminate this Agreement at least ten (10) days prior to the end of the notice period. Unless Licensee has given written notice of termination as required by this Section 3.5, the amended fees and charges shall become effective at the end of the notice period and shall automatically become a part of and be governed by the terms of this Agreement.

1.8

1.9 Wherever this Agreement provides for Licensee to pay for work done by Licensors, the charge for such work shall be non-discriminatory and include all reasonable material, labor, engineering and administrative costs and applicable overheads, and Licensors's standard billing rates for having personnel on site shall apply; provided, however that nothing contained in this Section or any license issued hereunder shall be construed as requiring Licensee to bear any expense which exceeds the maximum rate allowable under applicable federal or state laws or regulations, or which must be borne by persons or entities other than Licensee.

1.10

1.11 Whenever Licensee is obligated by any terms of this Agreement to reimburse Licensors for costs, such costs will be determined by the Licensors using the Licensors's cost accounting systems used for recording capital and expense activities.

1.12

## **2ARTICLE**

### **PRACTICES**

1.1 Licensee's Telecommunications Facilities shall be installed and maintained in accordance with the requirements and specifications of the then current editions of the National Electrical Code (NEC), the National Electrical Safety Code (NESC), and the Wisconsin State Electric Code, each of which are incorporated by reference in this Agreement, and the rules and regulations of the Occupational Safety and Health Act of 1970 (OSHA) and in compliance with any lawful rules or orders now in effect or that may hereafter be issued by Licensors or other authority having jurisdiction. Wherever Licensee's Telecommunications Facilities extend from Licensors's Conduit System to the system of another party, Licensee will comply with the same safety and engineering requirements and specifications as set forth in this Agreement in connecting those systems that are required when using Licensors's Conduit System.

1.1 The location of Licensee's Telecommunications Facilities in each Conduit or Innerduct will be designated by Licensor.

1.2

1.3 Licensee and its employees, agents and contractors are prohibited from entering any portion of Licensor's Facilities. Any violation of this provision is subject to the Fee for Unauthorized Access specified in Exhibit B. Licensor shall allow Licensee access to its Telecommunications Facilities, under escort by an employee of Licensor. Licensor will provide an escort within five (5) hours of Licensee's request, and if requested by Licensee will make reasonable efforts to provide an escort in a shorter period of time. Licensee agrees to pay for such escort service based upon Licensor's standard hourly rates (2 hour minimum) for the type of personnel selected by Licensor to act as the escort. In the event the Licensee reasonably believes that conditions pose an immediate threat to the safety of Licensee's employees or the public, then Licensee shall be granted immediate access to its Telecommunications Facilities.

1.4

1.5 If Licensee's Telecommunications Facilities, or any part thereof are not maintained in accordance with conditions provided by this Agreement and Licensee has not corrected the violation within thirty (30) days from receipt of written notice thereof from the Licensor, Licensor may at its own option correct said conditions if such conditions can be corrected within Licensor's Facilities. Licensor will notify Licensee in writing prior to performing such work whenever practicable. When the Licensor reasonably believes, however, that such conditions pose an immediate threat to the safety of the Licensor's employees or the public, interfere with the performance of the Licensor's service obligations, or pose an immediate threat to the physical integrity of the Licensor's Facilities, the Licensor may perform such work and/or take such action at the Licensee's expense that it deems necessary without first giving written notice to the Licensee and Licensor shall be indemnified by the Licensee for such work in accordance with Article VIII, Section 8.3 of this Agreement. As soon as practicable thereafter and not later than seventy-two (72) hours after having taken such action, Licensor will advise Licensee in writing of the work performed or the action taken and make all reasonable efforts to arrange for reaccommodation of Licensee's Telecommunications Facilities so affected. The Licensee shall be responsible for paying the Licensor for all reasonable costs incurred by the Licensor in taking action under this subsection.

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1.7 Licensee's Telecommunications Facilities placed in Licensor's Conduit System must meet all of the following physical design specifications:

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1.8.3 Construction splices in Licensee's cables shall be located in Manholes, Handholes or Pedestals.

1.1.3 The maximum permissible diameter of any cable of Licensee and the number of Licensee's cables to be placed in any of Licensor's Conduits shall be determined by Licensor.

1.1 The following specifications apply to the connections of Licensee's Conduit to Licensor's Conduit System:

1.2

1.2.3 Where Licensee's Conduit physically connects with Licensor's Manhole, the section of Licensee's Conduit which connects with the Manhole shall be installed by Licensor or its contractor at Licensee's expense.

1.1.3 If Licensee constructs a Conduit which is to be connected to any of Licensor's Manholes, such Conduit shall be sealed against the entry of gases or liquids at the opening to the Manhole, and if Licensee's Conduit enters a building it shall also be sealed where it enters the building.

1.1 Licensor's service restoration requirements shall take precedence over any and all work operations of the Licensee in Licensor's Conduit System.

## **1ARTICLE**

### **REMOVAL OF FACILITIES**

Licensee will remove its Telecommunications Facilities within thirty (30) days after termination of this Agreement. If Licensee fails to remove its Telecommunications Facilities within such thirty (30) day period, Licensors shall have the immediate right to remove Licensee's Telecommunications Facilities at Licensee's expense in accordance with Article III, Section 3.6 and 3.7 of this Agreement, and Licensee shall be liable for and pay all fees and charges pursuant to terms of this Agreement to Licensors until Licensee's Telecommunications Facilities are actually removed from Licensors's Conduit System, and Licensee shall indemnify Licensors for such work in accordance with Article VIII, Section 8.3 of this Agreement.

## **1ARTICLE**

### **INSPECTION OF LICENSEE'S FACILITIES**

1.1 Licensors reserves the right to make periodic inspections at any time of any part of Licensee's Telecommunications Facilities occupying Licensee's Conduit System for the limited purpose of determining whether Licensee's facilities are in compliance with the terms of this Agreement; provided that such inspections must be non-invasive.

1.1 Licensors will give Licensee reasonable advance written notice of such inspections, and Licensee shall have the right to have a representative attend such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been forwarded to Licensee.

1.2

1.3 Such inspections shall be conducted at Licensors's expense.

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1.5 The making of periodic inspections or the failure to do so shall not operate to impose upon Licensors any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.

1.6

## **2ARTICLE**

### **UNAUTHORIZED OCCUPANCY OR ACCESS**

1.1 Licensee shall send written notice to Licensors within seventy-two (72) hours of any discovery of unauthorized access of Licensors's Facilities.

1.2

1.3 If Licensors discovers Licensee has entered Licensors's Facilities without authorized access, Licensors shall send written notice to Licensee specifying the alleged unauthorized access. Licensee agrees to acknowledge receipt of the notice not later than seventy-two (72) hours after having received such notice.

1.4

1.5 If any of Licensee's Telecommunications Facilities are found occupying any portion of any of Licensors's Conduit System other than as set forth in Exhibit A, Licensors, without prejudice to its other rights or remedies under this Agreement, may assess an Unauthorized Access Fee as set forth in Exhibit C and require Licensee to remove the unauthorized occupancy within thirty (30) days of receipt of notice from Licensors regarding Licensee's unauthorized access. At the end of such thirty (30) day period, if Licensee has not removed the unauthorized occupancy, Licensors may, at Licensors's sole option, remove Licensee's Telecommunications Facilities at Licensee's expense in accordance with Article III, Sections 3.6 and 3.7, and Licensors shall be indemnified by Licensee for such work in accordance with Article VIII, Section 8.3 of this Agreement.

1.1.3 Nothing contained in this Section or any license issued hereunder shall be construed as requiring Licensee to bear any expenses which, under applicable federal or state laws or regulations, must be borne by person or entities other than Licensee.

1.1 No act or failure to act by Licensors with regard to said unlicensed use shall be deemed as ratification of the unlicensed use.

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## **2 ARTICLE**

### **LIABILITY AND DAMAGES**

1.1 Licensors shall exercise reasonable precaution to avoid damaging the facilities of the Licensee and shall make an immediate report to the Licensee of the occurrence of any such damage caused by its employees, agents or contractors. Licensors agree to reimburse the Licensee for all reasonable costs incurred by the Licensee for the physical repair of such facilities damaged by the negligence of Licensors, however, Licensors shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's Telecommunications Facilities, or for any special, indirect, or consequential damages arising in any manner whatsoever out of the use of Conduit Systems or Licensors' actions or omissions in regards thereto, including, but not limited to, as a result of Licensors' negligence, and Licensee shall indemnify and hold harmless Licensors, its employees, agents and contractors from and against any and all claims, demands, causes of action, costs, and attorneys' fees of whatever kind resulting therefrom. The foregoing shall not limit Licensors' liability for willful or intentional misconduct.

1.1 The Licensee shall indemnify, protect and hold harmless the Licensors from any and all claims, demands, causes of action and costs, including reasonable attorneys' fees, which arise directly or indirectly from the construction and operation of Licensee's Telecommunications Facilities, including but not limited to, taxes, special charges by others, claims and demands for damage or loss from intellectual property infringement, for libel and slander, for trespass, for unauthorized use of television or radio broadcast programs and other program material and from and against all claims, demands and costs including attorneys' fees for infringement of patents with respect to the manufacture, use and operation of Licensee's Telecommunications Facilities in combination with Licensors' Conduit System or otherwise.

1.2

1.3 The Licensee shall indemnify, defend, and hold harmless the Licensors from any and all claims, demands, causes of action and costs, including reasonable attorneys' fees, which arise directly or indirectly from any work performed by Licensors that was necessitated by the installation, maintenance, presence, use or removal of Licensee's Telecommunications Facilities or by the proximity to the facilities of all parties placed in the Conduit System or any work this Agreement authorizes Licensors to perform.

1.4

1.5 Licensors shall give Licensee prompt notice of any actions against Licensors for which Licensee may be required to indemnify Licensors under this Agreement. Licensors shall cooperate fully with Licensee in the defense of any such claim or action and shall not settle any such claim or action without the prior written consent of Licensee. If Licensors settle any such claim or action without Licensee's prior written consent, Licensee shall have no obligation to indemnify Licensors with respect to such claim or action.

1.6

## **2ARTICLE**

### **INSURANCE**

1.1 Without limiting any obligations or liabilities of Licensee under this Agreement, Licensee shall provide and maintain for the term of this Agreement, at its own expense, without direct reimbursement, insurance coverages in forms and amounts that Licensee believes will adequately protect it but in no case less than:

1.1.3 Workers' Compensation Insurance in accordance with all applicable laws, including Employer's Liability Insurance in the amount of \$1,000,000 per accident. Policy shall be endorsed to include a waiver of subrogation in favor of Licensors.

1.1.3 Commercial General Liability Insurance including Contractual Liability Coverage, covering liability assumed under this Agreement, Products/Completed Operations Coverage, Broad Form Property

Liability Coverage, and Personal Injury Coverage in the amount of \$1,000,000 combined single limit for Bodily Injury and Property Damage and a \$2,000,000 occurrence aggregate.

1.1.3 Commercial Automobile Liability Insurance including all owned, hired, leased assigned, and non-owned vehicles, for Bodily Injury Liability and Property damage, a combined single limit of not less than \$1,000,000 and a \$2,000,000 occurrence aggregate.

1.1.3 Excess Liability Coverage to provide \$3,000,000 per occurrence in excess of the insurance listed in Sections 9.1.1 through 9.1.3 above.

1.1 Licensee's insurance policies required by Sections 9.1.2 through 9.1.4 above, shall name Licensor as an additional insured. Licensee hereby waives all rights of recourse, including any right to which another may be subrogated, against the Licensor for personal injury, including death, and property damage. Licensee's insurance policies required by Sections 9.1.1 through 9.1.3 above shall be primary insurance. Licensee's insurance policies required by Sections 9.1.1 through 9.1.4 shall be non-contributing with any other insurance maintained by Licensor. All policies are to provide Licensor with thirty (30) days prior written notice of cancellation or any material adverse change in conditions. Licensee shall provide Licensor with Certificates of Insurance issued to the Licensor evidencing coverage currently in effect upon execution of and for the duration of this Agreement.

1.2

1.3 Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

1.4

## **2ARTICLE**

### **ASSIGNMENT OF RIGHTS AND LIABILITIES**

1.1 The rights and obligations of Licensee under this Agreement shall not be assigned, transferred or sub-licensed in whole or in part without the prior written consent of Licensor, which consent shall not be unreasonably withheld. No less than sixty (60) days prior to any proposed assignment, Licensee shall provide Licensor: (1) written notice of the proposed assignment; and (2) adequate assurance of any proposed assignee's financial responsibility, the adequacy of which is to be determined by Licensor. Under any assignment the assignee must agree to assume all liabilities and obligations of the Licensee.

1.1 Notwithstanding Section 10.1, Licensor acknowledges and agrees that Licensee may assign or collaterally assign, all of its rights, interests and obligations hereunder to any of its affiliates, provided, however: (1) Licensee gives Licensor written notice no less than sixty (60) days prior to any such assignment; (2) no less than sixty (60) days prior to any assignment, Licensee provides Licensor with adequate assurance of the proposed assignee's financial responsibility, the adequacy of which is to be determined by Licensor; and (3) the assignee agrees to assume all liabilities and obligations of the Licensee.

1.2

1.3 Any attempt of an assignment by Licensee to a non-affiliated party, without the prior written consent of Licensor shall be void. Any attempt of an assignment to an affiliated party which does not meet the criteria set forth in Section 2.1 shall be void.

1.4

1.5 Licensor shall have the right to assign this Agreement and to assign its rights and delegate its obligations and liabilities under this Agreement either in whole or in part. Licensor shall provide notice to Licensee of any assignment which shall state the effective date thereof. Upon the effective date and to the extent of the assignment, Licensor shall be released and discharged from all obligations and liabilities under this Agreement.

1.6

1.7 Neither this Agreement nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto.

1.8

1.9 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

1.10

## **2 ARTICLE**

### **TERMINATION OF AGREEMENT**

1.1 This Agreement and the license issued pursuant to this Agreement shall automatically cease and terminate whenever there is filed either by Licensee or against Licensee in any court pursuant to any statute, either of the United States or any state, a petition in bankruptcy or insolvency, or for reorganization, or for the appointment of a receiver or a trustee of all or substantially all of the Licensee's property, or whenever Licensee makes a general assignment for the benefit of creditors; provided, however, Licensor shall have the discretion to allow Licensee a reasonable period of time within which to settle, compromise, resolve or cure the circumstances leading to such termination.

1.1 This Agreement and the license issued pursuant to this Agreement shall automatically terminate:

1.2

1.2.3 If Licensee's Telecommunications Facilities are used or maintained in violation of law or in aid of any unlawful act or undertaking; or

1.1.3 If any authorization which is required of the Licensee by any governmental or private authority for the construction, operation and maintenance of the Licensee's Telecommunications Facilities is denied or revoked.

1.1 Notwithstanding Licensor's rights under Article VII, Licensor shall have the right to terminate this Agreement:

1.2

1.2.3 If Licensee is in default of any term of this Agreement; or

1.1.3 If Licensee's insurance carrier shall at any time notify Licensor or Licensee that the policy or policies of insurance, required under Article IX hereof, have been or will be canceled or changed and if the requirements of Article IX are not satisfied upon the effective date of such cancellation or change.

1.1 This Agreement shall become effective upon its execution and if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of five (5) years. The parties may agree to extend this Agreement for an additional five (5) year period and for consecutive five (5) year periods upon agreement as to terms, including fees and charges, for each additional extension period.

1.2

1.3 Even after the termination of this Agreement, Licensee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Licensee's Telecommunications Facilities as provided for in Article VIII of this Agreement.

1.4

## **2 ARTICLE**

### **MISCELLANEOUS**

1.1 **Notices.** Wherever in this Agreement notice is required to be given by either party to the other, such notice shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail, return receipt requested, with postage prepaid and properly addressed as follows:



If to Licensor: Mid-Plains, Inc.  
Attn: Angela C. Keelan  
8501 Excelsior Drive  
Post Office Box 46520  
Madison, WI 53744-6520

With a copy to: Axley Brynson, LLP  
Attn: Daniel T. Hardy, Esq.  
2 East Mifflin Street  
Post Office Box 1767  
Madison, WI 53701

If to Licensee: KMC Telecom, Inc.  
Attn: Tricia Breckenridge  
1755 North Brown Road  
Third Floor  
Lawrenceville, GA 30043

With a copy to: KMC Telecom, Inc.  
Attn: Joiava Philpott, Esq.  
1755 North Brown Road  
Third Floor  
Lawrenceville, GA 30043

or to such other address as either party may, from time to time, give the other party in writing.

1.1 **Non-Waiver.** Failure of Licensor or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege, but the same shall be and remain at all times in full force and effect.

1.2

1.3 **Force Majeure.** Neither party shall be responsible for delays or failures in performance of any part of this agreement (other than an obligation to make money payments) resulting from any acts or occurrences due to fire, flood, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages or other cause beyond its control.

1.4

1.5 **Entire Agreement.** The terms contained in this Agreement and any Exhibits referred to herein, which are incorporated into this Agreement by reference, constitutes the entire Agreement between the parties with respect to the subject matter hereof, superseding all prior agreements, understandings, proposals and other communications, oral or written. Neither party shall be bound by any terms additional to or different from those in this Agreement. No representations, understandings, agreements or warranties, expressed or implied, have been made or relied upon in the making of this agreement other than those specifically set forth. The terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both parties, except as set forth in Article III, Section 3.4 of this Agreement.

1.6

1.7 **Severability.** In the event that any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired, invalid, illegal or unenforceable provisions shall be replaced by a mutually acceptable provision, which being valid, legal and enforceable, comes closest to the intentions of the parties underlying the invalid, illegal or unenforceable provision.

1.8

1.9 **Headings.** All headings contained in this agreement are for convenience only and are not intended to affect the meaning or interpretation of any part of this Agreement.

1.10

1.11 **Governing Law.** This Agreement, and the rights and obligations contained in it, shall be construed in accordance with and governed by the laws of the State of Wisconsin.

1.1 **Costs of Enforcement.** In the event of a default by Licensee, Licensee, its successors and assigns, agree to pay all of Licensor's costs of enforcing its rights under this Agreement, including all reasonable attorneys' fees, all costs of arbitration and other costs which Licensor may incur with regard to collection of any amounts owed under this Agreement or with respect to the enforcement of any other rights of Licensor under this Agreement.

1.2

1.3 **Confidentiality.** Each party hereby agrees that it will not, without the express written consent of the other party, disclose, reveal or communicate, any terms of this Agreement, or the transactions contemplated hereunder, except for such disclosure as may be required pursuant to court order or applicable law or expressly permitted by this Agreement. Each party further agrees to take all action necessary or appropriate to maintain the confidentiality of this Agreement.

1.4

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in duplicate on the day and year first written above.

WITNESS

MID-PLAINS, INC.

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_  
Title: \_\_\_\_

WITNESS:

KMC TELECOM, INC.

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_  
Title: \_\_\_\_

## **EXHIBIT A**

### **LOCATION OF LICENSEE'S OPTIC CABLE PROVIDING TELECOMMUNICATIONS SERVICES TO THE DEAN CLINIC LOCATED AT 752 NORTH HIGH POINT ROAD, MADISON, WISCONSIN**

Licensee's fiber optic cable ring has been installed into Licensor's Conduit System and Facilities to provide telecommunications services to the Dean Clinic located at 752 North High Point Road, Madison, Wisconsin. All of Licensee's fiber optic cable ("Licensee's cable") in Licensor's Conduit System and Facilities is marked identifying it as Licensee's property. Licensee's cable is routed through Licensor's Conduit System as follows<sup>1</sup>:

1. Licensee's cable enters Licensor's Conduit System at the northwest corner of the intersection of Greenway Blvd. and Deming Way at Handhole L11C-37/04H.
2. From Handhole L11C-37/04H to Pedestal L11C-38/04 [106'] Licensee's cable utilizes (1) 1.25" Innerduct;
3. From Pedestal L11C-38/04 to Manhole 134 [24'] Licensee's cable utilizes (1) 1.25" Innerduct;
4. At Manhole 134 Licensee's cable enters Licensor's Manhole system. From Manhole 134, through Manholes 133, 132 and 114, to Manhole 115 [2082'] Licensee's cable utilizes (1) 1.125" Innerduct (Licensee's cable is spliced at Manhole 114 in a splice case marked as Licensee's property);
5. At Manhole 115, Licensee's cable exits Licensor's Manhole system. From Manhole 115 to Pedestal M10A-06/27 [266'] Licensee's cable utilizes (1) 1.25" Innerduct, and loops through the Pedestal;
6. From Pedestal M10A-06/27 to Pedestal M10A-07/26F [126'] Licensee's cable utilizes (1) 1.25" Innerduct and loops through the Pedestal;
7. From Pedestal M10A-07/26F to Handhole M10A-10/22H [674'] Licensee's cable co-occupies (1) 1.25" Innerduct with Licensee's cable and loops through Pedestals M10A-07/25 and M10A-10/23;
8. From Handhole M10A-10/22H to Handhole M9A-7/22H [2752'] Licensee's cable co-occupies (1) 2" Innerduct with Licensor's cable;
9. From Handhole M9A-07/22H to Pedestal M9A-07/22 [20'] Licensee's cable utilizes (1) 1.25" Innerduct;
10. From Pedestal M9A-7/22 to Pedestal M9A-08/19 [288'] Licensee's cable utilizes (1) 1.25" Innerduct and loops through the Pedestal;
11. From M9A-08/19 to Handhole M9B-09/12H [828'] Licensee's cable co-occupies (1) 2" Innerduct with Licensor's cable;
12. From Handhole M9B-09/12H to Handhole M9B-09/08H [360'], at the Dean Clinic, Licensee's cable co-occupies (1) 2" Innerduct with Licensor's cable.
13. At Handhole M9B-09/08H Licensee's cable exits Licensor's Conduit System. From Handhole M9B-09/08H to the Dean Clinic building, Licensee's cable utilizes (1) 1.125" Innerduct owned by the Dean Clinic;

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<sup>1</sup>Please see attached plant map as necessary.

14. From the Dean Clinic building to Handhole M9B-09/07 Licensee's cable utilizes (1) 1" Innerduct owned by the Dean Clinic;
15. At Handhole M9B-09/07H, Licensee's Cable re-enters Licensor's Conduit System. From Handhole M9B-09/07H to Pedestal M9B-10/02[546'] Licensee's cable co-occupies (1) 2" Innerduct with Licensor's cable.
16. From Pedestal M9B-10/02 to Pedestal M9B-06/01 [430'] Licensee's cable loops through Pedestal M9B-10/02 and utilizes (1) 1.25" Innerduct;
17. From Pedestal M9B-06/01 to Handhole M9B-06/01H [10'] Licensee's cable loops through Pedestal M9B-06/01 and utilizes (1) 1.25" Innerduct;
18. From Handhole M9B-06/01H to Handhole L9C -46/01H [1290'] Licensee's cable utilizes (1) 1.25" Innerduct;
19. At Handhole L9C-46/01H Licensee's cable exits Mid-Plains' Conduit System into a Handhole owned by Licensee.

The footages identified in this Exhibit are taken from sequential numbers printed on the fiber cable outer sheath and reflect the actual distance of Licensor's Conduit System occupied by Licensee's cable.

## **EXHIBIT B**

### **LOCATION OF LICENSEE'S FIBER OPTIC CABLE PROVIDING TELECOMMUNICATIONS SERVICES TO THE ORBI-TECH CORP. LOCATED AT 1212 FOURIER DRIVER, MADISON, WISCONSIN.**

Licensee's fiber optic cable ring has been installed into Licensor's Conduit System and Facilities to provide telecommunications services to the Orbi-Tech Corp., located at 1212 Fourier Driver, Madison, Wisconsin. All of Licensee's fiber optic cable ("Licensee's cable") in Licensor's Conduit System and Facilities is marked identifying it as Licensee's property. Licensee's cable is routed through Licensor's Conduit System as follows<sup>2</sup>:

1. Licensee's cable enters Licensor's Conduit System at Pedestal L10C-41/01;
2. From Pedestal L 10C-41/01 to Orbi-Tech Corp., located at 1212 Fourier Driver, Madison, Wisconsin, [110'] Licensee's cable utilizes (1) 4" Conduit.

The footage identified in this Exhibit is taken from sequential numbers printed on the fiber cable outer sheath and reflect the actual distance of Licensor's Conduit System occupied by Licensee's cable.

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<sup>2</sup>Please see attached plant map as necessary.

## EXHIBIT C

### FEES, CHARGES AND RENTS

Effective Date: December 1, 1999

Make-Ready Work Charges \$215.70

Unauthorized Access Fee \$15,000.00 per occurrence

Monthly Conduit Occupancy Rental Fee \$2,185.80

Non-Discriminatory Cost for Conduit Occupancy

	<u>Monthly Costs</u>
4" Direct Buried Duct with 1 1/4" Innerduct per Foot	\$0.19
4" Direct Buried Duct with 2" Innerduct per Foot	\$0.49
1 1/4" Direct Buried Innerduct per Foot	\$0.36
2" Direct Buried Innerduct per Foot	\$0.40
4" Conduit + 1 1/4" Innerduct + Manhole per Foot	\$0.19
4" Conduit + 2" Innerduct + Manhole per Foot	\$0.49
4" Conduit with no Innerduct per Foot	\$0.43

Monthly Conduit Occupancy Rental Fee Based Upon Actual Occupancy of Licensor's Conduit System as set forth in Exhibit A:

	<u>Monthly Costs</u>
Manhole + 4" Conduit + 1 1/4" Innerduct: 2,478' @ \$0.19 =	\$470.82
Direct buried 4" Conduit + 1 1/4" Innerduct: 1,290' @ \$0.19 =	\$245.10
Direct Buried 2" Innerduct: 4,486' @ \$0.20 <sup>3</sup> =	\$897.20
Direct Buried 1 1/4" Innerduct: 1,548' @ \$0.36 =	<u>\$557.28</u>
TOTAL	\$2,170.40

Monthly Conduit Occupancy Rental Fee Based Upon Actual Occupancy of Licensor's Conduit System as set forth in Exhibit B:

	<u>Monthly Costs</u>
4" Direct buried Conduit with no Innerduct: 110' @ \$0.14 <sup>4</sup> =	\$15.40

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<sup>3</sup>The monthly cost for Direct Buried 2" Innerduct is only \$0.20 because the Direct Buried 2" Innerduct is being shared by two parties.

<sup>4</sup>The monthly cost for 4" Direct Buried Conduit with no Innerduct is only \$0.14 (one-third of the total monthly cost for 4" Direct Buried conduit with no Innerduct of \$0.43) because the 4" Direct Buried Conduit with no Innerduct is being shared by three parties.